



## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Kevin J. Dobi, APRN; Decision and Order

On October 4, 2017, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (OSC), seeking to deny the March 31, 2017 DEA Certificate of Registration application filed by Kevin J. Dobi APRN (Respondent) for registration in Montana. Request for Final Agency Action Exhibit (RFAAX) 2. The OSC alleged Respondent's application should be denied pursuant to 21 U.S.C. 824(a)(1) because Respondent materially falsified his application. *Id.* at 1.

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in a Request for Final Agency Action (RFAA) on May 16, 2022.<sup>1</sup>

#### I. FINDINGS OF FACT

Respondent surrendered for cause a Texas state registered nurse license on or about October 6, 1997. RFAAX 3, at 11 (Order of the Board of Nurse Examiners for the State of Texas). Respondent also surrendered for cause a DEA controlled substance registration, no. MD1340710, on September 9, 2011. RFAAX 1, at 2 (Certification of Respondent's Registration History).

On March 31, 2017, Respondent filed an application seeking a DEA controlled substance registration for schedules II-V. RFAAX 1, at 3-6 (Respondent's application). On the application, Respondent was asked whether he had "ever surrendered (for cause) . . . a federal controlled substance registration." Respondent answered no. *Id.* at 4. Respondent was also asked whether he had "ever surrendered (for cause) . . . a state professional license." Respondent

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<sup>1</sup> Respondent made a timely hearing request and submitted a Corrective Action Plan (CAP). RFAAX 4. DEA rejected Respondent's CAP on or about December 21, 2017, RFAAX 5, and a revised CAP was rejected on or about January 29, 2018, RFAAX 6. Respondent waived his right to a hearing, RFAAX 7, and proceedings were terminated on November 29, 2017, RFAAX 8.

answered no. *Id.* The Agency finds that Respondent's answers were clearly false because Respondent had surrendered a controlled substance registration and a state professional license for cause.

## II. DISCUSSION

The Administrator may deny an application for registration if the applicant materially falsified an application. 21 U.S.C. 824(a)(1).<sup>2</sup> Here, Respondent provided false information to two liability questions on his March 31, 2017 application—falsely responding that he had never surrendered for cause a state professional license or a federal controlled substances registration. Agency decisions have repeatedly held that false responses to the liability questions on an application for registration are material. *E.g., Crosby Pharmacy and Wellness*, 87 FR 21,214; *Frank Joseph Stirlacci, M.D.*, 85 FR 45,229, 45,234-35 (2020). Accordingly, the Agency finds that the Government has established grounds to deny Respondent's application.

## III. SANCTION

Where, as here, the Government has established grounds to deny an application for registration, the burden shifts to the respondent to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18,882, 18,910 (2018) (citing *Samuel S. Jackson*, 72 FR 23,848, 23,853 (2007)). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.*, 81 FR 8247, 8248 (2016).

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<sup>2</sup> Although the language of 21 U.S.C. 824(a) discusses suspension and revocation of a registration, it may also serve as the basis for the denial of a DEA registration application. *E.g., Crosby Pharmacy and Wellness*, 87 FR 21,212, 21,214 (2022); *Robert Wayne Locklear*, 86 FR 33,738, 33,744-45 (2021) (collecting Agency decisions)

In this matter, Respondent did not avail himself of the opportunity to refute the Government's case or demonstrate why he can be entrusted with a registration. Accordingly, the Agency will order the sanctions the Government requested, as contained in the Order below.

### **ORDER**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny the pending application for a Certification of Registration in Montana submitted by Kevin J. Dobi, APRN. This Order is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

### **SIGNING AUTHORITY**

This document of the Drug Enforcement Administration was signed on June 16, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

**Scott Brinks,**

*Federal Register Liaison Officer,*

*Drug Enforcement Administration.*